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SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-87554; File No. SR-NYSE-2019-61)

November 15, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Proprietary Market Data Fee Schedule regarding the NYSE Best Quote and Trades Market Data Feed

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 4, 2019, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Proprietary Market Data Fee Schedule (“Market Data Fee Schedule”) regarding the NYSE Best Quote and Trades (“BQT”) market data feed. The Exchange proposes to make the fee change effective November 4, 2019. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes a non-substantive amendment to the Market Data Fee Schedule regarding the NYSE BQT market data feed that does not add or change any existing fees. The proposed amendment would include a reference to market data products from NYSE Chicago, Inc. ("NYSE Chicago").

The NYSE BQT data feed provides best bid and offer and last sale information for the Exchange and its affiliates, NYSE Arca, Inc. ("NYSE Arca"), NYSE American LLC ("NYSE American"),⁴ and NYSE National, Inc. ("NYSE National").⁵ In connection with the transition to trading to the Pillar trading platform of another affiliate of the Exchange, NYSE Chicago,⁶ the Exchange recently filed a proposed rule change to amend the content of the NYSE BQT market data feed⁷ to include NYSE Chicago BBO and NYSE Chicago Trades market data feeds.⁸

⁴ See Securities Exchange Act Release No. 34-73553 (Nov. 6, 2014), 79 FR 67491 (Nov. 13, 2014) (SR-NYSE-2014-40) ("NYSE BQT Approval Order").

⁵ See Securities Exchange Act Release No. 83359 (June 1, 2018), 83 FR 26507 (June 7, 2018) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Content of the NYSE Best Quote & Trades Data Feed) (SR-NYSE-2018-22).

⁶ NYSE Chicago has announced that, subject to rule approvals, it will transition to trading to Pillar on November 4, 2019. See Trader Update, available at https://www.nyse.com/publicdocs/nyse/notifications/trader-update/NYSEChicago_Migration_update_9.4.pdf.

⁷ See SR-NYSE-2019-60, filed on November 4, 2019 (the "NYSE BQT Filing").

⁸ See Securities Exchange Act Release No. 87389 (October 23, 2019), 84 FR 57904 (October 29, 2019) (SR-NYSEChicago-2019-15).

The Exchange currently charges an access fee of \$250 per month for the NYSE BQT data feed. The Exchange is not proposing any change to the access fee. Footnote 5 to the Market Data Fee Schedule further provides that to subscribe to NYSE BQT, subscribers must also subscribe to, and pay applicable fees for, NYSE BBO, NYSE Trades, NYSE Arca BBO, NYSE Arca Trades, NYSE American BBO, NYSE American Trades, NYSE National BBO, and NYSE National Trades. Because, as provided for in the NYSE BQT Filing, NYSE will begin including data from NYSE Chicago BBO and NYSE Chicago Trades in NYSE BQT, the Exchange proposes to add references to NYSE Chicago BBO and NYSE Chicago Trades to Footnote 5 to the Market Data Fee Schedule. Accordingly, in addition to subscribing to, and paying for, NYSE BBO, NYSE Trades, NYSE Arca BBO, NYSE Arca Trades, NYSE American BBO, NYSE American Trades, NYSE National BBO and NYSE National Trades, subscribers of NYSE BQT will need to subscribe to NYSE Chicago BBO and NYSE Chicago Trades. Because there are currently no fees for NYSE Chicago BBO and NYSE Chicago Trades, adding these products to Footnote 5 of the Market Data Fee Schedule will not increase the fees for NYSE BQT.

In anticipation of NYSE Chicago BBO and NYSE Chicago Trades being included in NYSE BQT, all current NYSE BQT customers have subscribed to NYSE Chicago BBO and NYSE Chicago Trades and therefore will be able to comply with the requirement proposed in this rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general, and Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ in particular, in

⁹ 15 U.S.C. 78f(b).

that it provides an equitable allocation of reasonable fees among its members, issuers, and other persons using its facilities and is not designed to permit unfair discrimination among customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act¹¹ in that it is consistent with (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹² which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange further believes that requiring market data recipients to separately subscribe to and pay for the ten underlying data feeds to NYSE BQT is reasonable because by design, NYSE BQT represents an aggregated and consolidated version of those existing ten data feeds. The Exchange notes that it is not seeking with this filing to establish fees relating to the underlying BBO and Trades data feeds, as those fees have already been established consistent with Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(2)¹⁴ thereunder, and which may be amended from time to time. However, the Exchange believes it would be unfair if it did not require NYSE BQT data feed recipients to separately subscribe to and pay for those underlying feeds because otherwise, NYSE BQT data feed recipients would be receiving a data product that

¹⁰ 15 U.S.C. 78f(b)(4), (5).

¹¹ 15 U.S.C. 78k-1.

¹² 17 CFR 242.603.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

includes such underlying data at a lower cost than separately subscribing to the underlying data feeds. The Exchange therefore believes that the fee structure for NYSE BQT would not be lower than the cost to another party to create a comparable product, including the cost of receiving the underlying data feeds.

The Exchange further believes that the proposed NYSE BQT fee structure is equitable and not unfairly discriminatory because all vendors and subscribers that elect to purchase NYSE BQT would be subject to the same fees. In addition, vendors and subscribers that do not wish to purchase NYSE BQT may separately purchase the individual underlying data feed, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating NYSE BQT. To enable such competition, the Exchange would continue to offer NYSE BQT on terms that a subscriber of the underlying feeds could offer a competing product if it so chooses.

With respect to this proposed rule change, because NYSE Chicago does not currently charge any fees for NYSE Chicago BBO or NYSE Chicago Trades, the proposed amendment to include these products in Footnote 5 to the Market Data Fee Schedule will not change any fees for NYSE BQT. Moreover, current subscribers to NYSE BQT have already subscribed to NYSE Chicago BBO and NYSE Chicago Trades, and therefore such subscribers will not have any issues complying with this proposed rule change.

The Exchange also notes that the use of NYSE BQT is entirely optional. Firms have a wide variety of alternative market data products from which to choose, including the Exchanges' own underlying data products, and proprietary data products offered by the Exchange's competitors, and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to these data products further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar "best quote and trade" market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute its similar product than the Exchange charges to consolidate and distribute NYSE BQT, prospective users likely would not subscribe to, or would cease subscribing to, NYSE BQT. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the NYSE BQT feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective users would avail themselves of that lower cost and elect not to take NYSE BQT.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹⁵ the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the NYSE BQT data feed represents aggregated and consolidated information of ten existing market data feeds. Although the Exchange, NYSE Arca, NYSE American, NYSE National and NYSE Chicago are the exclusive distributors of the underlying BBO and Trades feeds from which certain data elements are taken to create NYSE BQT, the Exchange may not be the exclusive distributor of the aggregated and consolidated information that comprises the NYSE BQT data feed. Any other market data recipient of the underlying data feeds would be able, if they chose, to create a data feed with the

¹⁵ 78 U.S.C. 78f(b)(8).

same information as NYSE BQT and distribute it to their clients on a level playing field with respect to latency and cost as compared to the Exchange's product.

The market for proprietary data products is competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with one another for listings and order flow and sales of market data itself, providing ample opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market. Indeed, the U.S. Department of Justice ("DOJ") (the primary antitrust regulator) has expressly acknowledged the aggressive actual competition among exchanges, including for the sale of proprietary market data. In 2011, the DOJ stated that exchanges "compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale."¹⁶

Moreover, competitive markets for listings, order flow, executions, and transaction reports impose pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. Broker-dealers send their order flow and transaction reports to multiple venues, rather than providing them all to a single venue, which in turn reinforces this competitive constraint. As a 2010 Commission Concept Release noted, the "current market structure can be described as dispersed and complex" with "trading

16 Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), <http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html>; see also Complaint in U.S. v. Deutsche Borse AG and NYSE Euronext, Case No. 11-cv-2280 (D.C. Dist.) ¶ 24 ("NYSE and Direct Edge compete head-to-head ... in the provision of real-time proprietary equity data products.").

volume ... dispersed among many highly automated trading centers that compete for order flow in the same stocks” and “trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.”¹⁷ Indeed, equity trading is currently dispersed across 13 exchanges,¹⁸ 31 alternative trading systems,¹⁹ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 19% market share (whether including or excluding auction volume).²⁰ And as the Commission’s own Chief Administrative Law Judge found after considering extensive fact and expert testimony and documentary evidence on the subject, “there is fierce competition for trading services (or ‘order flow’)” among exchanges, and “the record evidence shows that competition plays a significant role in restraining exchange pricing of depth-of-book products.” *In the Matter of the Application of Securities Industry And Financial Markets Association For Review of Actions Taken By Self-Regulatory Organizations*, Initial Decision Release No. 1015, Administrative Proceeding File No. 3-15350 (June 1, 2016), at pp. 8 and 33.

¹⁷ Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7-02-10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598.

¹⁸ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

¹⁹ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atlist.htm>.

²⁰ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

If an exchange succeeds in competing for quotations, order flow, and trade executions, then it earns trading revenues and increases the value of its proprietary market data products because they will contain greater quote and trade information. Conversely, if an exchange is less successful in attracting quotes, order flow, and trade executions, then its market data products may be less desirable to customers in light of the diminished content and data products offered by competing venues may become more attractive. Thus, competition for quotations, order flow, and trade executions puts significant pressure on an exchange to maintain both execution and data fees at reasonable levels.

In addition, in the case of products that are also redistributed through market data vendors, the vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Vendors will not elect to make NYSE BQT available unless their customers request it, and customers will not elect to pay for NYSE BQT unless the product can provide value by sufficiently increasing revenues or reducing costs in the customer's business in a manner that will offset the fees. All of these factors operate as constraints on pricing proprietary data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²¹ of

²¹ 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4²² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2019-61 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

²² 17 CFR 240.19b-4(f)(2).

²³ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSE-2019-61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2019-61 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Jill M. Peterson
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²⁴ 17 CFR 200.30-3(a)(12).

